

ARMY CONTRACTING AGENCY

Unauthorized Commitments and Ratification Process Guide

15 March 2007

Unauthorized Commitments and Ratification Process Guide

This guide provides Army Contracting Agency (ACA) customers a better understanding of why unauthorized commitments (UACs) are of concern to the Army and how to avoid making an unauthorized commitment. The guide also explains the procedures that must be followed to take corrective action for an UAC and make payment to the contractor. In addition, it provides ACA contracting personnel information on how the ratification process must be completed.

An "unauthorized commitment" is defined at the Federal Acquisition Regulation FAR 1.602-3(a) as "an agreement or purchase that is not solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government." FAR 1.602-1 provides ratification contract authority only to an appointed Contracting Officer within their delegated authority.

"Ratification" as defined in <u>FAR 1.602-3(a)</u> "means the act of approving an unauthorized commitment by an official who has the authority to do so." Ratification procedures provided in <u>AFARS 5101.602-3-90</u>, as supplemented by the Army Contracting Agency (ACA) <u>Acquisition Instructions (AI) 5101.602-3</u> will be used to process all UACs subject to ACA acquisition procedures.

UACs are a growing problem within the Army. The ratification process is time-consuming, requires considerable documentation, and often damages the Government's ability to conduct future business with the firms involved. UACs represent an unwarranted expense to the Army budget because:

- The administrative effort required to process the ratification always far exceeds that required to purchase the item or service using appropriate procedures,
- Many items and services may be purchased at a better price when completed in the marketplace, and
- The normal acquisition process weeds out items that should not be purchased.

The Government can only avoid UACs through attention to detail and strict adherence to official guidance by personnel throughout the chain of command. When a UAC has taken place, the "committer" and the chain of command must understand the ratification process, the UAC

investigation process, and the actions required for final disposition of the transaction.

Personnel who do not have authority to commit the Government must not make any statements that could be interpreted by a vendor as a commitment to either commence work or to provide services/supplies. All individuals who deal with commercial businesses must be aware of the policies to prevent problems in the procurement process and embarrassment to the Government. All ranks of government employees, whether civilian or military, must abide by the same rules and assure that only "authorized" personnel make financial commitments for the Government.

Common causes of unauthorized commitments include:

- An unauthorized individual does not take the time to process a requisition to contracting or to follow procedures for a Government Purchase Card (GPC) purchase. The individual may be lazy or in a hurry to "please the boss." Sometimes these individuals use the premise that "asking for the forgiveness" is easier/faster than doing it right the first time. Nothing could be further from the truth. In addition to delays and extra work, government personnel who make a financial commitment when adequate funds are not available may be subject to serious administrative and criminal penalties under the Antideficiency Act. Potential violations of the Anti-deficiency Act are addressed during the UAC evaluation and ratification process. See the ASA(FM&C) Financial Operations (FO) Anti-deficiency Act (ADA) website at http://www.asafm.army.mil/fo/fod/ada/ada.asp#prime and http://www.asafm.army.mil/fo/fod/ada/ada.asp (if you cut and paste in these addresses they will work) for additional information.
- A GPC cardholder places an order that exceeds his/her authority.
- A vendor mistakes a request for information as an order, ships the item, the receiver does not realize it is an improper order and accepts the item rather than reject and return the item.
- An unauthorized individual approves work above the scope or dollar value of an existing contract. Note: Sometimes these unauthorized actions are corrected under the contract's "Disputes" clause instead of the ratification process. The contracting officer will review the circumstances and determine the proper process.
- A contractor continues to perform a service contract or provide leased/rented equipment after the expiration date of the contract. This frequently occurs on yearly services/maintenance/lease type contracts

for which there is a continuing need. Often the dollar value of these contracts is fairly low and the services so much a part of the organizational operation that it becomes, in effect, invisible – thus forgotten about.

Typical questions about unauthorized commitments include:

What is my role in obtaining the supplies and services my organization needs?

Obviously, as the requiring agency, you play a key role in the acquisition process. One of your responsibilities in this process is to locate sources (vendors) and obtain price estimates from those resources. You then include that information on the requisition (either electronic or hardcopy). At that point, your responsibility and authority to deal with the vendor must be exercised exclusively through the contracting officer.

There is a definite distinction between obtaining price estimates and actually placing an order with a vendor. Occasionally, government employees cross the line and violate public law. They are potentially setting themselves up to be held financially responsible either to the Government or to the vendor. Whether it is intentional or not is irrelevant to the determination of whether the action is an unauthorized commitment. When someone other than the appointed Contracting Officer commits the U.S. Government, an UAC has occurred and the "perpetrator" may receive administrative and criminal sanctions under the Antideficiency Act.

How do I know if I've made an unauthorized commitment?

If you think you've crossed the line, you probably have. Some key signals would be the vendor offering to send you the products, agreeing on a delivery date, discussing payment terms or negotiating price. Remember that you are only contacting the vendor for a price estimate.

Problems usually surface when the vendor asks for payment and there is no existing contract. Payment cannot be made unless a Contracting Officer has awarded a contract or an authorized GPC holder acting within his or her delegation of authority has ordered the item(s).

How are unauthorized commitments rectified?

UACs are rectified through a process known as "ratification." Ratification is a legal and regulatory process that makes the UAC legal within the constraints of fiscal policy. The outcome of the ratification process is a contract that legally binds the Government.

Are all unauthorized commitments rectified?

No. The employee/soldier may be held personally liable for payment to the vendor. This situation is most often seen when the individual takes an illegal or improper action in making the UAC.

For example:

What can I do to decrease the chances of making an unauthorized commitment?

Make sure the vendor knows you are not authorized to place orders. We recommend a standard disclaimer when corresponding with vendors that clearly states that you are requesting estimated prices and availability for planning purposes only. Also recommended you get your supporting ACA Contracting Officer involved early in the planning process.

What happens during the ratification process?

After the Contracting Officer has been notified of a possible UAC, he/she will then begin gathering all available information on the UAC by requiring the activity/unit to complete the required documentation. At this point, cooperation within the chain of command is essential for resolution. The activity must document the chain of events leading up to the UAC. The individual committing the UAC must document how it occurred; the supervisor along with the Commander or Agency Head must then endorse the narrative and provide corrective action taken or to be taken. The action will then be reviewed within the contracting chain to determine if it should be ratified and if adequate corrective action has been taken to ensure the situation is not repeated. See the following procedures for the entire step-by-step ratification process:

Ratification Procedures:

The basic ratification procedures outlined in <u>FAR 1.602-3</u>, <u>AFARS 5101.602-3 and 5101.602-3-90 shall be followed</u>. The "Request for Approval of Unauthorized Commitment" form provides each region with a uniform UAC submission document (attachment 1). In accordance with AFARS ratification procedures, the "Request for Approval of Unauthorized Commitment" form provides for a uniform and succinct package, describing the circumstances that lead to the UAC; the senior staff officer's investigation of and action on the UAC; the contracting officer's review of UAC; legal review and recommended disposition of the UAC; and, Chief of Contracting Office ratification approval. (The current version of the fill-able form is available from the ACA POC.)

The "Request for Approval of Unauthorized Commitment" form should include the following clarifications and/or information to complete the ratification process:

- The UAC documentation shall address the value of the UAC, contractors name, description of item, when the UAC occurred, and committing activity.
- Part I, Section A, Items 1 5: The individual making the UCA will sign statements describing the circumstances, the reasons contracting procedures were not followed, what bona fide Government requirement necessitated the commitment, the benefit received and other pertinent facts and send this information to the individual's commander or senior staff officer.
- Part I, Section A, Items 6 & 7: The individual's commander or senior staff officer will then sign statements describing attempts to resolve UCA.
- Part I, Section B, Items 1 4: The individual's commander or senior staff officer will then sign statements verifying the accuracy and completeness of documentation, describing measures taken to prevent recurrence (including disciplinary actions taken) and providing a complete description and funding for ratifying the contract.
- Part II: Concurrence officials, referred to as the "Commander or Agency Head (or designee)" may be interpreted to mean the unit commander, director, or activity chief (first 06 or equivalent in the individual's chain of command) will approve the individual's commander or senior staff officer's sign statements describing attempts to resolve UCA prior to requesting ratification (i.e. returning

merchandise, individual paying from personal funds, etc.) and special remedial corrective action and/or disciplinary action taken.

- Part III: Assigns a Contracting Officer to process ratification
- Part IV: The Contracting Officer shall document that the limitations established at FAR 1.602-3(c)(1-7) are satisfied.
- Part V: A written review of the UAC documentation and a recommendation whether the acquisition may be ratified under provisions of FAR/AFARS shall be obtained from the supporting legal office and included in the unauthorized commitment file.
- Section B: Ratification approval by appropriate level. The HCA may ratify UCAs and delegate this authority no lower than to the chiefs of contracting offices. The PARC may ratify UCAs less than \$100,000 and chiefs of contracting offices may ratify UCAs less than \$10,000.
- Additional information not covered by the form may be included using a memorandum for record format.
- The form is provided in Attachment 1 or is available from the ACA/Regional POCs.

Other requirements of this process:

- After ratification, the GPC may be used to satisfy the commitment if the
 amount of payment is within the cardholder's authority; if the payment
 is made in the same fiscal year as the commitment; and if the
 commitment itself is properly chargeable to the current fiscal year. If
 prior fiscal year funds are required to satisfy the commitment, a
 purchase order, or other formal contractual instrument, payable
 through vendor payment channels, will be required.
- Each contracting office shall keep a log of all UACs completed within the fiscal year. Recommend setting up an accessible office file within the Standard Procurement System, currently PD2.
- All documentation of UAC shall be filed with the final order that is executed for payment and will be maintained for a minimum of 3 years after payment. See contract retention requirements provided by <u>FAR</u> 4.805.

Reporting Requirement:

The Director of the supporting ACA Contracting office will provide periodic summary reporting of UACs to the senior level of command supported. The reporting process should provide the impact of UACs on the commander's organization in terms of administrative time and dollars lost. In addition the need to reduce UACs within their activities shall be stressed. This reporting process will also provide ACA metrics tracking data. (See AI 5101.601)

The Director of the ACA goal is to eliminate UACs. The ACA contracting personnel owes it to our customers to be proactive in identifying where UACs occur and ensure that our customers are trained in the proper contracting procedures. Therefore, knowing where the UACs emanate is of importance. To achieve this goal the Director of the ACA requires a semi-annual report. This report will reflect the number of UACs, the total dollars they represent and ACA location. The report for the first six months of each Fiscal Year (FY) (01 Oct – 31 Mar) is due May 15th and a cumulative report for the entire FY (01 Oct – 30 Sep) is due November 15th of each year, IAW ACA Policy Memorandum P0016. Each PARC will list each installation in your region and report a zero ("0") if no UACs occurred during that reporting period. (The report format is provided in Attachment 2 or is available from the ACA/Regional POCs.)

AMOUNT (\$)	TO (Contractor Name and Address)
(,	To (community Nume and Numess)
FOR (Item or Service)	DATE OF COMMITMENT
COMMITTING ACTIVIT	Y/UNIT
The individual making the un and forward to his/her immed individual (Unit Commander,	RT I – DESCRIPTION OF COMMITMENT AND UNIT COMMANDER'S REVIEW AUTHORITY: FEDERAL ACQUISITION AUTHORITY (FAR) 1.602-3 ARMY FEDERAL ACQUISITION REGULATION SUPPLEMENT (AFARS) 5101.602-3. authorized commitment shall complete items 1-5 of Part I, Section A, provide the required documentation, sign, date liate supervisor for completion of Items 6 & 7. The immediate supervisor shall then forward the file to the appropriate Director or Activity Chief) for completion of Part I, Section B. The complete file shall be forwarded through ector of the Supporting Installation Directorate of Contracting. All information shall be completed in detail.
Completed by individual man of Part I, Section A, Items 6 o	SECTION A – COMMITMENT CIRCUMSTANCES sing the unauthorized commitment and supervisor of that individual. Following immediate supervisor's completion & 7, forward through command channels to Unit Commander, Director or Activity Chief (first 06 or equivalent).
	IDUAL DESCRIBING CIRCUMSTANCES
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EXPLAIN WHY NORMA	L PROCUREMENT PROCEDURES WERE NOT FOLLOWED
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	PART I – SECTION A – COMM	MITMENT CIRCUMSTANCES (Contin	ued)
3. DESCRIBE BONA I	IDE GOVERNMENT REQUIREMEN	T NECESSITATING THE COMMITM	IENT
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4. DESCRIBE GOVER	NMENT RECEIVED BENEFITS (Giv.	value of benefit and other pertinent facts)	
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	2		
	F-1		
5. LIST AND ATTACH	ALL RELEVANT DOCUMENTS (Inc.	lude orders, invoices and other evidence of	ed 2
	TEL RESERVANT DOCUMENTS (Mei	ade orders, invoices and other evidence of	the transaction)
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INDIVIDUAL MAKING I	JNAUTHORIZED COMMITMENT		S.112 (MM 95) 11)
5. DESCRIBE ATTEMP	TS TO RESOLVE UNAUTHORIZED	COMMITMENT PRIOR TO REQUES	TING RATIFICATION (Such as
eturning merchandise, indi	vidual paying from personal funds, etc.)		CATTON (Such as,
	24		
			8

7. COMMENTS OF IM	MEDIATE SUPERVISOR OF INDIVIDU	UAL MAKING UNAUTHORIZED COMM	HITMENT
			**
TYPED NAME, GRADE OF SUPERVISOR	OR RANK, TITLE AND ORGANIZATION	SIGNATURE	DATE (MM/DD/YY)
OF SOFERVISOR			
	PART 1 - SECTION B - CO	ONTRACTUAL RATIFICATION	
(Completed by Unit Comm	ander, Director, or Activity Chief (first 06 o	r equivalent in chain of command) Complete	e items 1 through 4 and
forward through chain of	command to Director of the Supporting Insta	llation Directorate of Contracting.)	and the state of t
1 DESCRIBE SPECIAL	DEMEDIAL CORRECTIVE ACTION (ND OD DISCOUNT IN THE CONTRACT	
any administrative action	to be taken under applicable personnel autho	AND/OR DISCIPLINARY ACTION TAKE writy or furnish an explanation of why no disci	EN (Include a description of
necessary.)		or yarran an explanation of my no disci	pimary action was constaered
2. DESCRIBE ACTION	TAKEN TO PREVENT RECURRENCE	OF UNAUTHODIZED A CT	
	THE TENT RECORDENCE	OF UNAUTHORIZED ACT	
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			3
3. I HAVE REVIEWED	PART I, SECTION A, AND VERIFY THA	AT THE INFORMATION IS ACCURATE	AND COMPLETE, THAT
THE GOVERNMENT RE	CEIVED A BENEFIT AND ASSOCIATE	ED VALUE FROM THE UNAUTHORIZE	D COMMITMENT AND I:
□CONCUR WIT	TH RATIFICATION D	OO NOT CONCUR with the ratification of the	Unauthorized Commitment
of the Unautho	rized Commitment (E	Explain Non-concurrence)	onaanonzea communent
4 COMPLETED DATE OF			
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THE TIME THE UNAUT	HORIZED COMMITMENT WAS MADE	SPECIFICALLY STATE THAT FUNDS V	VERE AVAILABLE AT
□YES □NO		THE STILL AVAILABLE.	
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OF UNIT COMMANDER	, TIED THE OKGANIZATION	DIGINATURE	DATE(MM/DD/YY)

PAR (Comple	T II – CONCURRING OFFICIAL'S APP ted by individual indicated by "X" as identifi supporting Directorate of Contro	ROVAL (Applicable only to actions greater ed by Director of Contracting. When comple acting of unit committing Government.)	than \$10K) eted, forward to
☐ GARRISON COM	MANDER (Unauthorized action committed b	y individual in direct chain of command of G	Garrison Commander)
☐ INSTALLATION (COMMANDER (Unauthorized action commi	tted by individual in direct chain of command	d of Installation Commander)
☐ FIRST GENERAL or Supporting Instal	OFFICER OR SES (Unauthorized action con lation) (Does not include reserve component,	nmitted by individual in tenant activity outsia	le direct chain of command
☐ COMMANDER OF	DIRECT REPORTING UNITS (DRU)		
1. APPROVAL OF CO	RRECTIVE ACTION AND/OR DISCIPLI nonconcurrence)	NARY ACTION TAKEN	
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	nonconcurrence)		
		e e e e e e e e e e e e e e e e e e e	
. I VERIFY THE ACCU DESCRIPTION AND FU YES NO (Explain n	RACY AND COMPLETENESS OF DOC NDING FOR THE RATIFYING CONTRA on-concurrence)	UMENTATION AND CONCUR WITH P	URCHASE
YPED NAME, GRADE O	R RANK, TITLE AND ORGANIZATION	SIGNATURE	DATE(MM/DD/YY)

	PART III - CONTRACTIN	G OFFICER ASSIGNMENT	
PROPOSED RATIFICA	TION ASSIGNED FOR PROCESSING TO (No.	me of Contracting Officer)	
TYPED NAME OF DIRI	CTOR OF CONTRACTING	SIGNATURE	DATE(MM/DD/YY)
		NG OFFICER'S REVIEW FARS 5101.602-3.90	
THE CONTRACTING OFF	CER ASSIGNED IN PART III SHALL REVIEW TH	IE FILE AND PROCEED AS FOLLOWS:	
Determine the adequacy or	fall facts, records, and documents furnished, and obta	in any additional material required.	
recommendation not to ratify	s to include a recommendation as to whether or not th must include a recommendation as to whether or not aim or in some other appropriate way.	e transaction should be ratified and reasons for the rec the matter should be processed under FAR Part 50 and	commendation. A I DFARS Part 250
3. Obtain an opinion from leg DOD FAR Supplement Part 5 proceeding with items 3 -10).	gal counsel as to whether the acquisition is ratifiable u 0 (Public Law 85-804), processed as a GAO claim, or	nder FAR and AFARS, whether the matter should be rotherwise handled. (Refer to Part V, Section A – Leg	processed under FAR and gal Review before
4. Determine whether supplied resulting from performance of	s or services have been provided to and accepted by t f the unauthorized commitment.	he Government, or the Government otherwise has obta	ained or will obtain a benefit
5. The ratifying official has the	e authority to enter into a contractual commitment.		
6. Determine whether the res	ulting contract would otherwise have been proper if m	ade by an appropriate contracting officer.	
7. State whether the price is o	onsidered fair and reasonable and indicate how that d	etermination was made.	
8. Indicate whether or not the require such concurrence.	contracting officer recommends payment and legal co	ounsel concurs in the recommendation, unless agency	procedures expressly do not
9. Determine that sufficient for	nds are available, and were available at the time the t	mauthorized commitment was made.	
10. State whether the ratificat	on is in accordance with any other limitations prescri	bed under agency procedures.	
CONTRACTING OFFICER'S	REVIEW:		
			(
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f more space is required, K	O's statement may be attached; signature and a	ate required below and on attachment)	
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		PART V	
		A – LEGAL REVIEW ted by Legal Counsel)	1
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(If more space is required,	legal opinion may be attached: signatur.	e and date required below and on attachment)	
TYPED NAME OF LEGA			
THED NAME OF LEGA	tl ADVISOR	SIGNATURE	DATE (MM/DD/YY)
	AFA	ECTION B RS 5101.602-3 Director of Contracting)	
1. ACTIONS OF \$10,000	OR LESS		
BASED ON THE FOREGO	OING DETERMINATION, REQUEST F	OR UNAUTHORIZED COMMITMENT IS:	
☐ Approved (Issue Puro			
Disapproved (Explain	disapproval)		
2. ACTIONS OVER \$10,0 appropriate documentation.	00 BUT NOT OVER \$100,000. (Written	request shall be submitted to the appropriate PAR	
Approval is recommen	100 A O O O O		
. ACTIONS OVER \$100,0		arough the appropriate PARC to the HCA for appro	
Approval is recommer	ded		
YPED NAME OF DIRECT	OR OF CONTRACTING	SIGNATURE	DATE (MM/DD/YY)

Command or Director Name: ACA HQ ROLL UP

Due: Semi-Annually

Each May 15th - First six-months of FY

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Due: Semi-Annually

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Attachment 2

Command or Director Name: Northern Region

Due: Semi-Annually

Each May 15th - First six-months of FY

Starting FY 07			Each November 15th - cumulative for EV	t six-months of FY	•
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FORT CARSON					
FORT DRUM					
FORT LEONARD WOOD					
FORT LEWIS					
FORT RILEY					
WEST POINT					
BUCHANAN SATELLITE OFFICE					
FORT MONMOUTH					
NATICK					
SELFRIDGE					
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Command or Director Name: Southern Region

Due: Semi-Annually

Each May 15th - First six-months of FY

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Due: Semi-Annually

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Command or Director Name: SWA

Each May 15th - First six-months of FY Due: Semi-Annually

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Command or Director Name: Contracting Ctr for Excellence

Due: Semi-Annually

Starting FY 07

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Command or Director Name: Korea

Due: Semi-Annually

Each May 15th - First six-months of FY

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CONTRACTING COMMAND - KOREA	61				3

Command or Director Name: Europe

Each May 15th - First six-months of FY
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Command or Director Name: Pacific Region

Due: Semi-Annually

Each May 15th - First six-months of FY

	Total	THE TAXABLE	HAWAII	FORIGREELEY	FORT OPER TY	TORT WAINWRIGHT	FORT RICHARDSON	PACIFIC	COMPAND THE PRICE -	CONTRACTING ELEMENT	Installation		Our cities O	Starting EV 07
										0.00	HAC's < & 10K	Number of		
0										VOOI &- VOI &	\$10K \$10KS Number of UAC'S	Number of HAC's		
0										Over \$100K	Number of UAC'S	Nimber SHADI	Each November 15th	Each May 15th - First six-months of FY
0										Of UAC's	l otal Number		Each November 15th - cumulative for FY	it six-months of FY
										Value	Total			